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90-1974

Supreme Court, U.S.
FILED
MAY 22 1991
OFFICE OF THE CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

JERRY SPARKS

PLAINTIFF-PETITIONER

V

CHURCHILL DOWNS

DAVID SWEAZY

JERRY LAWRENCE, DEFENDANTS,

APPELLEES

DEFENDANTS ARE SUED INDIVIDUALLY AND COLLECTIVELY

ON PETITION FOR WRIT OF CERTIORARI TO THE KENTUCKY SUPREME COURT

PETITION FOR CERTIORARI

JERRY SPARKS
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QUESTIONS PRESENTED

I HOW CAN YOU FIRE THE APPELLANT-PETITIONER 2 MONTHS AFTER THE ALLEGED INCIDENT THEN CONTINUE TO REHIRE HIM AFTER THE ALLEGED INCIDENT WHEN APPELLANT WAS NEVER AFFORDED ANY PROCEDURAL OR SUBSTANTIVE DUE PROCESS AS REQUIRED BY US SUPREME COURT CASE LAW AND BY THE LABOR MANAGEMENT AGREEMENT?

II HAVEN'T THE APPELLEES VIOLATED A 'CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT' OF THE APPELLANT-PETITIONER? OVER 35,000 SENIOR CITIZENS, MUTUAL CLERKS, HAVE STANDING IN THIS CASE AND THEIR RIGHTS ARE ALSO "ADVERSLY EFFECTED."

III HAVEN'T THE APPPELLEES VIOLATED THE EQUAL PROTECTION RIGHTS OF THE PETITIONER WHEN THEY KEPT ANOTHER MUTUAL CLERK DURING THAT SAME RACING MEET WHO EITHER LOST OR STOLE $3700.00? THE APPELLEES ALSO KEPT ANOTHER MUTUAL CLERK WHO CAME TO WORK DRUNK, JUST SUSPENDED HIM FOR

1 DAY!

IV HOW CAN YOU LEGALLY FIRE A MAN FOR ALLEGEDLY NOT GIVING A SET UP MAN 20 CENTS AND 60 CENTS IN CHANGE, WHEN THE PROPER PARTY TO TAKE ANY ACTION, THE MUTUAL MANAGER AND OR THE ASSISTANT MUTUAL MANAGER REFUSED TO TAKE ANY ACTION AT THE TIME OF THE ALLEGED INCIDENT? THAT SHOULD HAVE BEEN THE END OF THIS MATTER.

V APPELLANT-PETITIONER CAN SHOW ULTERIOR MOTIVES SWEAZY HAD FOR FIRING THE APPELLANT-PETITIONER, AFTER SWEAZY OBTAINED HIS NEW JOB AS ASSISTANT MUTUAL MANAGER!

VI WHY WOULD THE APPELLEES CONTINUE TO REHIRE THE APPELLANT-PETITIONER AFTER THE ALLEGED INCIDENT, IF THEY REALLY THOUGHT THE APPELLANT STOLE CHANGE? ISN'T IT 'CRUEL AND UNUSUAL PUNISHMENT UNDER THE 8 TH AMENDMENT TO FIRE A MAN AFTER HE HAS BEEN REHIRED AFTER THE ALLEGED INCIDENT?

VII HASN'T THE APPELLEES VIOLATED THE PETITIONER 5TH, 6TH, 8TH, AND 14TH AMENDMENT RIGHTS? INCLUDING HIS EQUAL PROTECTION RIGHTS UNDER THE 14TH AMENDMENT?

VIII WHAT GOOD IS A LABOR-MANAGEMENT AGREEMENT IF MANAGEMENT IS NOT REQUIRED TO FOLLOW THEIR OWN AGREEMENT?

VIV DIDN'T THE ARBITRATOR COMMIT A "GRIEVOUS ERROR" WHEN IT WAS NEVER PROVEN THAT THE APPELLANT TOOK 20 CENTS AND 60 CENTS IN CHANGE, AND DIDN'T HE COMMIT ANOTHER "GRIEVOUS ERROR" WHEN HE LEFT OFF HIS OPINION THE NAMES OF TWO WITNESSES WHO TESTIFIED FOR THE PETITIONER? ONE WITNESS WAS A SUPERVISOR WHO STOOD LESS THAN 10 FEET AWAY FROM THE PETITIONER!

X DOES THE RACE TRACK HAVE THE RIGHT TO BAR A EMPLOYEE-CUSTOMER FROM THE TRACK , THE VERY NEXT TIME PETITIONER IS SEEN AT THE TRACK, AS A CUSTOMER, AFTER HE EXERCISED HIS LEGAL RIGHT TO BRING HIS ARBITRATION HEARING, AND BEFORE the arbitrator rendered his opinion? ISN"T THIS RETAILATORY EVICTION?

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NO

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

JERRY SPARKS, PETITIONER

v

CHURCHILL DOWNS AND

DAVID SWEAZY, APPELLES

ON PETITION FOR WRIT OF CERTIORARI TO THE KENTUCKY SUPREME COURT

PETITION FOR CERTIORARI

THIS CASE COMES TO YOU DIRECTLY FROM THE KENTUCKY SUPREME COURT.

PETITION FOR CERTIORARI

OPINION BELOW

THE OPINION OF THE KENTUCKY COURT OF APPEALS IS CITED AS JERRY SPARKS V CHURCHILL DOWNS, DAVID SWEAZY 89 KY CA 1326.

JURISDICTION

THE ORDER OF THE KENTUCKY SUPREME COURT WAS ENTERED ON 4-3-91. JUDGEMENT OF THE KENTUCKY COURT OF APPEALS WAS ENTERED ON 9-21-90. THE CIRCUIT COURT MOTION IN DIVISION # 7 JEFFERSON CIRCUIT COURT FOR SUMMARY JUDGMENT WAS ENTERED on 6-2-89. THE PETITION OF CERTIORARI TO THE SUPREME COURT, STATE OF KENTUCKY, IS FILED HEREIN WITHIN 90 DAYS OF THE JUDGMENT BELOW. THIS COURT'S JURISDICTION IS INVOKED UNDER 28 USC 1257 (3) AND UNDER UNITED STATES V MENDENHALL 446 US 544, 100 S. CT 1870 (1980).

CONSTITIONAL PROVISIONS INVOLVED

THE 5TH, 6TH, 8TH, AND 14 TH AMENDMENT; NAMELY HOW CAN A COMPANY FIRE AN EMPLOYEE WITHOUT PROVIDING HIM WITH ANY DUE PROCESS, PROCEDURAL, SUBSTANTIVE, OR OTHERWISE, AND AT THE SAME TIME KEEP ANOTHER MUTUAL CLERK ON THE JOB WHO EITHER LOST OR STOLE $3700.00 DURING THAT SAME RACING MEET! APPELLEES ALSO KEPT ANOTHER MUTUAL CLERK DURING THAT SAME MEET WHO CAME TO WORK DRUNK. THEY SUSPENDED HIM FOR ONE DAY! ISN'T THIS A VIOLATION OF PETITIONERS EQUAL PROTECTION RIGHTS.

1) THERE HAS NEVER BEEN ANY PROOF THAT THE APPELLANT-PETITIONER EVER STOLE 20 CENTS AND 60 CENTS IN CHANGE, THAT THE DECISION OF THE ARBITRATOR WAS "CLEARY ERRONEOUS AND NOT SUPPORTED BY ANY SUBSTANTIAL EVIDENCE"

2) THAT THE PROPER PARTIES FILBURN THE MUTUAL MANAGER AND BUSH THE ASSISTANT MUTUAL MANAGER, REFUSED TO TAKE ANY ACTION AT THE TIME OF THE ALLEGED INCIDENT. THAT SHOULD HAVE BEEN THE END OF THIS CASE!

3) THAT CHURCHILL DOWNS CONTINUED TO REHIRE THE PETITIONER AFTER THE ALLEGED INCIDENT.

4) SWEAZY FIRED THE PETITIONER 2 MONTHS AFTER THE END OF THE RACING MEET AND HE HAD ALTERIOR MOTIVES FOR WHAT HE DID!

5) PETITIONER WAS NEVER AFFORDED ANY DUE PROCESS AS REQUIRED BY US SUPREME COURT CASE LAW AND REQUIRED BY THE LABOR-MANAGEMENT CONTRACT.

STATEMENT OF FACT;

AND STATEMENT OF CASE;

THIS IS A CASE OF FIRST IMPRESSION BEFORE THIS RESPECTED COURT.

A BRIEF SUMMATION OF THE FACTS.

YOUR PETITIONER, JERRY SPARKS IS A LICENSED MUTUAL CLERK. HE WORKS AT BOTH KEENELAND AND CHURCHILL DOWNS AS A MUTUAL CLERK! HE HAS HIS OWN REGULAR WINDOW AT KEENELAND AND AT CHURCHILL DOWNS HE WORKS ON WEEKENDS AND ON

HOLIDAYS AND BIG EVENT DAYS. HE IS EMPLOYED AT CHURCHILL DOWNS BASED UPON HIS SENIORITY! ON NOVEMBER 15 TH, 1987, A SET UP PERSON , A FEMALE SECRETARY OF THE SECURITY DEPARTMENT, WHO HAD NEVER SET ANYONE UP BEFORE, CLAIMED THE APPELLANT-PETITIONER DID NOT GIVE HER 20 CENTS AND 60 CENTS IN CHANGE WHEN SHE LEFT PETITIONER'S WINDOW. THE APPELLANT-PETITIONER WAS NEVER ASKED TO GIVE HER CHANGE, CLERK'S CAN MAKE MISTAKES, CUSTOMERS LEAVE TIPS, OR SOMETIMES THEY FORGET THEIR CHANGE. IN ANY EVENT THE PETITIONER DID NOT INTENTIONALLY KEEP HER CHANGE! PETITIONER WAS NEVER GIVEN THE OPPORTUNITY TO TELL HIS SIDE OF THE STORY, AND THE PROPER PARTIES TO TAKE ANY ACTION MR. FILBURN, THE MUTUAL MANAGER, AND MR. BUSH THE ASSISTANT MUTUAL MANAGER REFUSED TO TAKE ANY ACTION AGAINST THE PETITIONER AT THE TIME OF THE ALLEGED INCIDENT AS THEY SAW NO REASON TO TAKE ANY ACTION. 2 MONTHS AFTER THE ALLEGED INCIDENT, FILBURN RETIRED, BUSH BECAME THE NEW MUTUAL MANAGER, AND DAVID SWEAZY BECAME THE NEW ASSISTANT MUTUAL MANAGER. ON 3 OTHER OCCASIONS AFTER NOVEMBER

15th, THE DATE OF THE ALLEGED INCIDENT, CHURCHILL DOWNS CONTINUED TO REHIRE THE PETITIONER! WHY WOULD YOU REHIRE ANYONE IF YOU REALLY THOUGHT THEY STOLE CHANGE FROM YOU? IT IS COMMON KNOWLEDGE AND IS IN FACT EXPECTED BY MANAGEMENT THAT MUTUAL CLERKS WILL GO OVER OR SHORT CHANGE DURING THE COURSE OF A BUSY DAY, AND IF THEY DON'T GO OVER OR SHORT DURING THE DAY, MR. BUSH DID NOT BELIEVE THE MUTUAL CLERK WAS DOING HIS JOB! SEE PAGE 236 AND 259 OF THE ARBITRATOR'S TRANSCRIPT WHICH IS PART OF THIS RECORD. MUTUAL CLERK'S ARE ALLOWED TO BET AND CASH THEIR OWN TICKETS! NO ONE SAW THE APPELLANT-PETITIONER STEAL 20 AND 60 CENTS AND IN FACT THE PETITIONER NEVER STOLE 20 AND 60 CENTS! THE MUTUAL CLERK THAT EITHER LOST OR STOLE $3700.00 WAS AFFORDED THE OPPORTUNITY TO PAY BACK THE MONEY, YOUR PETITIONER WAS NEVER AFFORDED THE OPPORTUNITY TO PAY BACK THE ALLEGED 20 CENTS AND 60 CENTS! I WONDER WHY? FIRST OF ALL THE PETITIONER NEVER TOOK THE CHANGE, AND SECOND OF ALL CHURCHILL DOWNS WAS OUT TO GET YOUR PETITIONER AND THEY HAD ULTERIOR MOTIVES FOR

DOING SO! THE FIRST TIME THE PETITIONER FOUND OUT HE HAD BEEN FIRED WAS IN A LETTER FROM SWEAZY DATED 2 MONTHS AFTER THE CLOSE OF THE MEET. SEE EXHIBIT #1. AT THE TIME OF THE ALLEGED INCIDENT SWEAZY WAS NOT A PROPER PARTY TO TAKE ANY ACTION AGAINST THE PETITIONER AS HE WAS ONLY A LINE SUPERVISOR! WHEN FILBURN RETIRED, BUSH MOVED UP TO MUTUAL MANAGER , AND SWEAZY BECAME THE NEW ASSISTANT MUTUAL MANAGER, THIS IS WHEN HE SENT THE PETITIONER HIS TERMIKNATION LETTER. THIS WAS TWO MONTHS AFTER THE ALLEGED INCIDENT, AND CHURCHILL DOWNS CONTINUED TO REHIRE PETITIONER ON AT LEAST TWO DAYS AFTER THE DATE OF THE ALLEGED INCIDENT. THIS WAS THE FIRST ACTION TAKEN BY SWEAZY AFTER HE BECAME THE NEW ASSISTANT MUTUAL MANAGER.

THE PETITIONER WAS NEVER AFFORDED ANY DUE PROCESS AS REQUIRED BY THE LABOR MANAGEMENT AGREEMENT NOR WAS HE PROVIDED WITH ANY OPPORTUNITY TO TELL HIS SIDE OF THE STORY! SEE EXHIBIT #4.DAVID SWEAZY HAD A PERSONAL

VINDATA AGAINST YOUR PETITIONER! YOUR PETITIONER HAS LOST OVER $25,000 IN WAGES AND BENEFITS AS A RESULTS OF DEFENDANT'S SUBSTANTIAL EVIDENCE OF DISCRIMINATION.

THE LAW AND LEGAL ARGUMENT

A) YOUR PETITIONER WAS NOT AFFORDED ANY DUE PROCESS AS REQUIRED BY US SUPREME COURT CASE LAW AND REQUIRED UNDER THE LABOR-MANAGEMNT AGREEMENT! NOR WAS THE PETITIONER EVER DISCIPLINED AS REQUIRED BY THE LABOR-MANAGEMENT AGREEMENT! SEE EXHIBIT #4. THE COMPANY DID NOT COMPLY WITH ANY OF THE REQUIREMENTS SPECIFIED IN ARTICLE VI PARAGRAPH 2 LOCATED IN EXHIBIT # 4. THE COMPANY ADMITS THEY DID NOT GIVE THE APPELLANT-PETITIONER ANY DUE PROCESS. SEE PAGE 253, AND 254 OF THE ARBITRATOR'S TRANSCRIPT ! IT IS NOT NECESSARY TO ALLEGE AND PROVE INADEQUATE STATE REMEDIES WHEN PETITIONER'S CLAIM IS ONE OF SUBSTANTIVE DUE PROCESS OR A VIOLATION OF A SPECIFIC CONSTITIONAL AMENDMENT INCORPORATED INTO THE

14 TH AMENDMENT. PARATE V ISIBOR 868 F. 2D 821 6TH CIRCUIT, 1989; DUGAN V BROOKS 818 F 2D 513 , 6TH CIRCUIT 1987, VINSON V CAMPBELL CO FISCAL COURT 820 F 2D 194 6TH CIRCUIT 1987.

BECAUSE PETITIONER IS A LICENSED MUTUAL CLERK, HE HAS A PROPERTY RIGHT IN HIS MUTUAL CLERK'S LICENSE HE IS ENTITLED TO PROCEDURAL DUE PROCESS INCLUDING BOTH A PRETERMINATION AND POST TERMINATION HEARING. SEE CLEVELAND BOARD OF EDUCATION V LOUDERMILL 105 S. CT 1487. NEITHER ONE OF THESE HEARINGS WERE EVER PROVIDED TO THE PETITIONER!

WHEN THE TERMINATION IS WRONGFUL, PETITIONER IS ENTITLED TO HIS JOB BACK WITH BACK PAY! COMPENSATORY AND PUNITIVE DAMAGES CAN BE AWARDED!
SEE LIBBY PETERS V KY FARMERS BANK 85 KY C A 2279 MR AND CRZYB V EVANS 700 SW 2D 399, 1985 KY CASE.

B) APPELLEES VIOLATED A CLEARLY ESTABLISHED

CONSTITIONAL RIGHT OF THE PETITIONER BY NOT PROVIDING HIM WITH ANY DUE PROCESS, CREATED CRUEL AND UNUSUAL PUNISHMENT UPON THE PETITIONER, AND VIOLATED HIS EQUAL PROTECTION RIGHTS BY NOT TREATING HIM LIKE OTHER MUTUAL CLERKS IN THE SAME CLASS WERE BEING TREATED. NOR WAS THE APPELLANT-PETITIONER EVER CONFRONTED BY CHURCHILL DOWNS OR DAVID SWEAZY AT THE TIME OF THE ALLEGED INCIDENT!THEREFORE, PETITIONER'S CLEARLY ESTABLISHED CONSTITIONAL RIGHTS HIS 5 TH, 6TH, 8 TH, AND 14 TH, AMENDMENT RIGHTS HAVE BEEN VIOLATED AND ABRIDGED BY THE APPELLEES!

C) PETITIONER NEVER STOLE ANY CHANGE NOR DID ANYONE EVER SEE THE PETITIONER STEAL ANY CHANGE!MUTUAL CLERKS ARE ALLOWED TO BET OUT OF THEIR OWN WINDOW, CASH THEIR TICKETS OUT OF THEIR OWN WINDOW, CUSTOMERS LEAVE TIPS, CUSTOMERS FORGET THEIR CHANGE ARE POSSIBILITIES THAT COULD HAVE HAPPENED TO THE 20 AND 60 CENTS, IF IN FACT THE SET UP PERSON IS TELLING THE TRUTH! CERTAINLY THERE WERE LESS RESTRICTIVE MEANS OF PUNISHMENT FOR THE

APPELLANT IF IN FACT THE SET UP PERSON TOLD THE TRUTH! REMEMBER SHE WAS SENT TO SET UP YOUR PETITIONER! SEE EXHIBIT #7 SHORTAGES. IF YOU BELIEVE THE SETUP PERSON, THE WORSE THING THAT COULD HAVE HAPPENED TO YOUR PETITIONER IS THAT HE BE GIVEN A WARNING FOR HIS FIRST OFFENSE. SEE EXHIBIT #7.

D) THE APPELLANT EXCERISED HIS LEGAL RIGHT WHEN HE HAD HIS CASE GO TO ARBITRATION! ANY REASONABLE MAN WHO HEARD THE FACTS IN THIS CASE WOULD HAVE DETERMINED THAT THE APPELLANT PETITIONER WON HIS ARBITRATION HEARING. THE REASON IS THAT THE APPELLEES DID NOT FOLLOW THEIR OWN LABOR-MANAGEMENT AGREEMENT, NOR WAS THERE ANY SUBSTANTIAL EVIDENCE OR CLEAR AND CONVINCING EVIDENCE THAT THE PETITIONER EVER STOLE 20 CENTS AND 60 CENTS IN CHANGE! SEE EXHIBIT #7. IT IS A COMMON PRACTICE WITHIN THE INDUSTRY FOR MUTUAL CLERKS TO GO OVER OR SHORT CHANGE, THAT IS AN ADMISSION BY A PARTY OPPONENT! THE ARBITRATOR, DAVID BECKMAN, MADE A ''GRIEVOUS ERROR WHEN HE LEFT 2 WITNESSES FOR THE PETITIONER OFF OF HIS

OPINION." NOR WAS IT EVER PROVEN BY ANY EVIDENCE THAT THE PETITIONER STOLE CHANGE! THE ARBITRATOR COMMITTED A ''GRIEVOUS ERROR' WHEN HE MAKES IT LOOK LIKE THE PETITIONER HAD NO WITNESSES WHO TESTIFIED UPON HIS BEHALF! HIS SUBSTANTIVE DUE PROCESS INCLUDES CONDUCT THAT IS ARBITARY, CAPRICIOUS, OR UNREASONABLE. AN ADMINISTRATIVE DECISION MAY BE UNTAINTED BY IRRELEVANT CONSIDERATIONS AND SUPPORTED BY SUBSTANTIAL EVIDENCE , TO FREE IT FROM ARBITRARINESS, CAPRICIOUSNESS OR UNREASONABLENESS, TO MEET THE TEST OF SUBSTANTIVE DUE PROCESS. SEE YASHON V HUNT 825 F. 2D 1016 (6TH CIRCUIT 1987)IN THIS CASE THE ARBITRATOR'S DECISION WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE; THE APPELLEES HAD THE ARBITRATOR IN THEIR BACK POCKET! THE ARBITRATOR EVEN ADMITTED TO THE PETITIONER THAT HE WAS IN CHURCHILL'S DOWNS BACK POCKET BUT HE SAID, "YOU CAN'T PROVE THAT!" ANY REASONABLE MAN WOULD SEE THAT JUSTICE WAS NOT RENDERED IN THIS CASE! ESSENTIAL TO DUE PROCESS IS THAT THE MATTER BE FAIRLY HEARD BY A REASONABLE INPARTIAL TRIBUNAL. SALISBURY v.

HOUSING AUTHORITY OF THE CITY OF NEWPORT, 615 F. SUPP., 1433 (E.D. KY. 1985).

E) JUST 3 DAYS AFTER THE ARBITRATION HEARING, AND ON THE LAST DAY OF THE FALL MEET IN 1987, SECURITY UNDER THE DIRECTION OF DAVID SWEAZY GAVE THE PETITIONER HIS EVICTION LETTER, AS A CUSTOMER. PETITIONER WAS NOT DOING ANYTHING WRONG, JUST WATCHING THE RACES, SINCE HE DID NOT WORK AT THE TRACK EVERY DAY; PETITIONER WAS TOLD BY SEVERAL SECURITY GUARDS THAT IF SWEAZY AND CHURCHILL DOWNS CAN'T GET YOU ONE WAY THEY ARE GOING TO GET YOU ANOTHER WAY! CHURCHILL DOWNS BARRED THE PETITIONER FROM COMING TO THE TRACK AS A CUSTOMER JUST 3 DAYS AFTER THE ARBITRATION HEARING AND BEFORE THE ARBITRATOR RENDERED HIS OPINION. WHAT CHURCHILL DOWNS DID TO THE APPELLANT-PETITIONER CONSTITUTED RETAILTORY EVICTION WHICH SHOULD NOT BE TOLERATED AFTER A PERSON HAS JUST EXCERISED HIS LEGAL RIGHT TO BRING HIS ARBITRATION HEARING! SEE LIBBY PETERS V FARMERS NATIONAL BANK 85 KY C A 2279 MR. THE FIRST TIME BACK TO THE TRACK AFTER HIS

ARBITRATION HEARING PETITIONER WAS EVICTED FROM THE TRACK! PETITIONER CAME TO THE TRACK AS A CUSTOMER! CHURCHILL DOWNS WAS OUT TO GET THE PETITIONER ANY WAY THEY COULD! LIBBY PETERS HAD A LEGAL RIGHT TO PARTICIPATE IN A STING OPERATION, EVEN THOUGH HER BANK CUSTOMERS DIDN'T LIKE IT, YOUR PETITIONER HAD A LEGAL RIGHT TO BRING HIS ARBITRATION HEARING AND HE WAS PUNISHED BY CHURCHILL DOWNS FOR DOING SO!

F) WHY WOULD CHURCHILL DOWNS CONTINUE TO REHIRE THE PETITIONER BACK AS A MUTUAL CLERK AFTER THE ALLEGED "CHANGE" INCIDENT IF THE REALLY BELIEVED HE STOLE CHANGE? THE ALLEGED INCIDENT TOOK PLACE ON NOVEMBER 15, 1987, YET CHURCHILL DOWNS CONTINUED TO REHIRE THE PETITIONER BACK AS A MUTUAL CLERK ON NOVEMBER 27TH AND 28TH. SEE PAGE 368 OF THE ARBITRATOR'S TRANSCRIPT! IT DOESN'T MAKE ANY SENSE TO HIRE A MAN BACK ON THE SAME JOB IF YOU REALLY AND HONESTLY BELIEVE HE IS A THIEF! DAVID SWEAZY AND CHURCHILL DOWNS HAD ULTERIOR MOTIVES FOR WHAT THEY DID! CHURCHILL DOWNS

DOES NOT DENY REHIRING THE PETITIONER BACK AFTER THE ALLEGED INCIDENT. SEE ARBITRATOR'S TRANSCRIPT PAGE 223.

G) UNDER THE LEGAL DOCTRINE OF ESTOPPEL OR RATIFICATION THE APPELLEES SHOULD BE BARRED OR PRECLUDED FROM FIRING THE PETITIONER. THEY HAVE IN FACT CONDONED PETITIONER'S ALLEGED ACTIVITY BY CONTINING TO REHIRE PETITIONER AFTER THE ALLEGED INCIDENT.

H) AFTER FILBURN THE MUTUAL MANAGER AND BUSH THE ASSISTANT MUTUAL MANAGER REFUSED TO TAKE ANY ACTION AGAINST THE PETITIONER ON NOVEMBER 15, 1987, THE DATE OF THE ALLEGED INCIDENT, THAT SHOULD HAVE BEEN THE END OF IT! THEY WERE THE PROPER PARTIES TO TAKE ANY ACTION AND THEY REFUSED! SEE PAGE 220, AND PAGE 361, AND 414 OF THE ARBITRATOR'S TRANSCRIPT. THEY SAW NO REASON TO TAKE ACTION AND THEREFORE TOOK NO ACTION AGAINST THE PETITIONER. SWEAZY WAS NOT THE PROPER PARTY TO FIRE THE PETITIONER. SEE PAGES 209, 361, 220, 168, 253, 254, 375,376

OF THE ARBITRATOR'S TRANSCRIPT. SWEAZY WAS ONLY AN AREA SUPERVISOR. BUSH THE ASSISTANT MUTUAL MANAGER, ADMITS HE NEVER HAD A CUSTOMER COMPLAINT ABOUT SPARKS. SEE PAGE 258, 264, OF THE ARBITRATION TRANSCRIPT.

I) UNDER ARTICLE XIII PARAGRAPH 9, EXHIBIT # 6,

10 DAY RULE

THE GRIEVANCE SHALL BE DISMISSED AND THE MATTER CLOSED,OR IN ANY EVENT, NOT LATER THAN THE 10 DAYS AFTER THE CLOSE OF THE MEET! SWEAZY SENT HIS TERMINATION LETTER TO THE PETITIONER 2 MONTHS AFTER THE CLOSE OF THE FALL 1987 MEET! THIS WAS MUCH LATER THAN THE 10 DAY RULE ALLOWS.

J) TO FIRE A MAN OVER ALLEGEDLY NOT GIVING A SET UP MAN 20 CENTS AND 60 CENTS IN CHANGE NOT ONLY HAS A "CHILLING EFFECT" ON THE PETITIONER,

IT ALSO HAS A VERY STRONG "CHILLING EFFECT" ON THE OTHER 35,000 MUTUAL CLERKS IN THIS COUNTRY AND MOST OF THESE PEOPLE ARE BETWEEN THE AGES OF 50 AND 70 YEARS OF AGE! SO IF THEY LOSE THEIR JOB, WHERE WILL THEY GO TO OBTAIN ANOTHER JOB? MANAGEMENT IS ATTEMPTING TO BREAK UP THIS UNION LOCAL 541 AND GO NON UNION IF THEY ARE ALLOWED TO WIN THIS CASE! MANAGEMENT WILL FIRE OLDER WORKERS, GO NON UNION AND REPLACE THESE OLDER WORKERS WITH NON UNION HELP. NEVER BEFORE IN THE HISTORY OF HORSE RACING HAS A MUTUAL CLERK EVER BEEN FIRED FOR ALLEGEDLY NOT GIVING A SET UP MAN 20 CENTS AND 60 CENTS IN CHANGE! SEE EXHIBIT #7. THIS EXCUSE IS A MERE FRONT OR PRETEXT FOR OTHER ULTERIOR MOTIVES THE APPELLES HAD FOR FIRING YOUR PETITIONER.

K) THERE ARE MIXED OR ULTERIOR MOTIVES FOR FIRING YOUR PETITIONER ! RACE TRACKS ALL OVER THIS COUNTRY ARE TRYING TO BREAK UP THE MUTUAL CLERKS UNIONS. YOUR PETITIONER HAS MORE FORMAL EDUCATION THAN ANY OTHER MUTUAL

CLERK WHO WORKS AT CHURCHILL DOWNS. DAVID SWEAZY HAD A PERSONAL VINDATA AGAINST THE PETITIONER; HE THOUGHT PETITIONER WAS HAVING AN AFFAIR WITH HIS WIFE WHILE THEY WERE SEPARATED! PETITIONER WASN'T, BUT NOW HE WISHED HE HAD! IN 1983 SWEAZY BARRED THE PETITIONER FROM ANOTHER TRACK LOUISVILLE DOWNS WHEN PETITIONER REFUSED TO PAY FOR SOME TICKETS THAT WERE PUNCHED OUT INCORRECTLY. AT THIS TRACK PETITIONER WAS A CUSTOMER. SEE PAGE 211, 213, OF THE ARBITRATION TRANSCRIPT. AFTER BEING AWAY FROM LOUISVILLE DOWNS FOR APPROXIMATELY 2 WEEKS PETITIONER WAS ALLOWED BACK ON THE TRACK. FROM 1983 THRU 12-30-87, THE PETITIONER HAD BEEN AT LOUISVILLE DOWNS ON AT LEAST 100 DIFFERENT OCCASIONS. ON 12-30-87 SWEAZY TOLD SECURITY THAT THE PETITIONER HAD TO LEAVE THE TRACK AS A CUSTOMER. SWEAZY WAS OUT TO GET THE PETITIONER ANY WAY HE COULD! THIS WAS SHORTLY AFTER THE EVENT AT CHURCHILL DOWNS.

L) SWEAZY WAS NOT THE MAN THAT TRAINED YOUR

PETITIONER. PETITIONER WAS TRAINED AT KEENELAND RACE TRACK.

M) SWEAZY TOLD THE PETITIONER HE WAS OUT TO GET HIM ANYWAY HE COULD FOR HAVING AN AFFAIR WITH HIS WIFE WHILE THEY WERE SEPARATED.

N) SWEAZY ADMITS HE DID NOT SEE THE PETITIONER STEAL 20 CENTS AND 60 CENTS IN CHANGE, NOR WAS HE THE PROPER PARTY TO TAKE ANY ACTION AGAINST THE PETITIONER. SEE ARBITRATION TRANSCRIPT PAGES 168, AND 218. SWEAZY WAS ONLY AN AREA SUPERVISOR AND HAD NO AUTHORITY TO TAKE ANY ACTION AGAINST YOUR PETITITIONER.

O) CHURCHILL DOWNS IS NOT IMMUNE FROM CIVIL LIABILITY. EVEN MUNICIPAL CORPORATIONS ARE NOT IMMUNE FROM CIVIL LIABILITY. SEE CITY OF LONDON CASE 687 SW 2D 144 (1985) AND HANEY V CITY OF LEXINGTON KENTUCKY 386 SW 2 738 (1964)

P) CLEARLY THE PUNISHMENT DOES NOT FIT THE

ALLEGED VIOLATION. THERE WERE MUCH LESS RESTRICTIVE MEANS OF PUNISHING THE PETITIONER ASSUMING WHAT THE SET UP PERSON SAID WAS TRUE. FOR EXAMPLE, THE PETITIONER COULD HAVE RECEIVED TRAINING. BUSH THE MUTUAL MANAGER WHO REFUSED TO TAKE ANY ACTION AGAINST THE PETITIONER, ADMITS THAT HE EXPECTS HIS CLERKS TO GO OVER OR SHORT CHANGE OR IN HIS EYES THE EMPLOYEES ARE NOT WORKING. SEE PAGE 231, 259, OF THE ARBITRATION TRANSCRIPT.

Q) IF THIS CASE IS ALLOWED TO STAND OVER 35,000 MUTUAL CLERKS COULD BE OUT OF A JOB! MANAGEMENT WOULD CITE THIS CASE AND SAY WE DON'T HAVE TC GIVE ANYBODY DUE PROCESS, NOR DO WE HAVE TO FOLLOW OUR OWN LABOR-MANAGEMENT AGREEMENT. NOR DO WE HAVE TO GIVE OUR EMPLOYEES EQUAL PROTECTION UNDER THE 14 TH AMENDMENT. IN THIS CASE THEY FIRED YOUR PETITIONER UNDER THE PRETEXT OF NOT GIVING A SET UP MAN 20 CENTS AND 60 CENTS IN CHANGE.BUT DURING THE SAME RACING MEET THEY KEPT ANOTHER MUTUAL CLERK ON THE JOB WHO EITHER LOST OR STOLE $3700.00 AND SWEAZY ADMITS IN THE ARBITRATION TRANSCRIPT THAT THE REASON HE

KEPT REED BROWN WAS BECAUSE THEY PLAYED GOLF TOGETHER AND DRANK BEER TOGETHER!SEE PAGE 228, AND 229 OF THE ARBITRATION TRANSCRIPT.

R)IF DAVID SWEAZY REALLY THOUGHT YOUR PETITIONER STOLE 20 CENTS AND 60 CENTS IN CHANGE WHY DIDN'T HE SHUT HIS MACHINE DOWN AND RUN A TOTAL ON PETITIONER'S MACHINE?SEE PAGE 227 OF THE ARBITRATION TRANSCRIPT. SWEAZY ADMITS IN THE ARBITRATION TRANSCRIPT THAT IT IS A COMMON PRACTICE FOR MUTUAL CLERKS TO GO OVER OR SHORT CHANGE, SEE PAGE 231 OF THE ARBITRATION TRANSCRIPT, SWEASY SAYS "ALMOST ALL MUTUAL CLERKS WILL HAVE OVER AND SHORT SITUATIONS. SWEAZY ADMITS THAT CUSTOMERS LEAVE TIPS OR FORGET THEIR CHANGE. SEE PAGE 214 OF THE ARBITRATION TRANSCRIPT.

S) BUSH THE ASSISTANT MUTUAL MANAGER ADMITS HE HAD NO WRITTEN COMPLAINT AGAINST YOUR PETITIONER. SEE PAGE 264 OF THE ARBITRATION TRANSCRIPT.

CONCLUSION

IN CONCLUSION PETITIONER REQUESTS THIS COURT TO SEND THIS CASE BACK TO THE JEFFERSON CIRCUIT COURT DIVISION #7 AND ALLOW THE PETITIONER A TRIAL ON HIS DAMAGES FOR A WRONGFUL TERMINATION.TO REINSTATE HIM AS A MUTUAL CLERK, AND TO GRANT HIM ANY AND ALL OTHER RELIEF THIS COURT FELLS IS NECESSARY IN ORDER TO GRANT FULL AND COMPLETE RELIEF TO THE PETITIONER.

PETITIONER ALSO REQUESTS THAT THE APPELLEES BE ASSESSED ALL FILING FEES, BRIEF COSTS, AND COURT COSTS FOR THIS SUIT THAT THE PETITIONER HAD TO PAY!IN ADDITION ALLOW THE PETITIONER THE RIGHT TO RETURN TO CHURCHILL DOWNS AS A CUSTOMER!

A WRIT OF CERTIORARI SHOULD BE ISSUED TO REVIEW THIS VERY SERIOUS MATTER THAT. EFFECTS OVER 35,000 MUTUAL CLERKS MOST OF WHICH ARE BETWEEN THE AGES OF 50 AND 70 YEARS OF AGE. WHERE WILL THESE SENIOR CITIZENS GO AND FIND ANOTHER JOB? IF THEY CAN FIRE THE PETITIONER

WITHOUT PROVIDING HIM WITH ANY DUE PROCESS, INCLUDING THE OPPORTUNITY TO TELL HIS SIDE OF THE STORY, THEN MANAGEMENT CAN DO IT TO ANY OR TO ALL THE MUTUAL CLERKS ALL OVER THIS COUNTRY AND MANAGEMENT WILL CITE THIS CASE AS THEIR AUTHORITY FOR DOING SO! THE ARBITRATOR DID NOT HAVE ANY EVIDENCE MUCH LESS ANY SUBSTANTIAL EVIDENCE TO SUPPORT HIS FINDINGS OF FACTS AND CONCLUSION OF LAW. THEREFORE, HIS DECISION SHOULD BE REVERSED. THERE IS ABSOLUTELY NOTHING IN THE RECORD TO SUPPORT THE ARBITRATORS FINDING OF FACT THAT YOUR PETITIONER STOLE 20 AND 60 CENTS IN CHANGE! THIS IS NOTHING MORE THAN A MERE PRETEXT, FOR FIRING THE PETITIONER FOR OTHER ALTERIOR MOTIVES. WHEN YOU "WEIGH" ALL THE EVIDENCE, "AND WHEN YOU LOOK AT THE " TOTALITY OF ALL THE CIRCUMSTANCES, "A REASONABLE MAN SHOULD SEE CLERLY THE PETITIONER SHOULD BE GIVEN HIS JOB BACK AND GRANTED A TRIAL TO DETERMINE HIS DAMAGES.

RESPECTFULLY SUBMITTED,

Jerry M. Sparks

JERRY M. SPARKS

VERIFICATION

I, JERRY SPARKS, AND THE PERSON OF RECORD FOR APPELLANT IN THE ABOVE ENTITLED MANNER.

I HAVE READ THE FOREGOING PETITION AND KNOW THE CONTENTS THEREOF.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF KENTUCKY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON 5-14-91 AT LOUISVILLE, KY.

Jerry Sparks

JERRY SPARKS

STATEMENT OF MAILING

JERRY SPARKS, HEREBY CERTIFY THAT , ON MAY 15, 1991, I SERVED 3 COPIES OF THE FOREGOING PETITION BY PERSONALLY PLACING SAME IN A SEALED ENVELOPE FIRST CLASS POSTAGE THEREON FULLED PREPAID IN UNITED STATES POST OFFICE MAIL BOX IN LOUISVILLE,KY, TO EACH OF THE PARTIES THERETO, AS FOLLOWS;

1-TO THE UNITED STATES SUPREME COURT, OFFICE OF THE CLERK, WHASHINTON, DC 20543, ENCLOSING ESTABLISHED FILING FEE; AND

2-ON APPELLEES, THROUGH THEIR COUNSEL OF RECORD JAMES U. SMITH, 200 S. FIFITH STREET, LOUISVILLE, KY. 40202 (3) COPIES GIVEN;

IT IS FURTHER CERTIFIED THAT ALL PARTIES REQUIRED TO BE SERVED HAVE BEEN SERVED , AND THAT THE LIST OF SUCH PARTIES IS AS SET FORTH ABOVE.

Jerry Sparks

ON 5-15-91, BEFORE ME THE UNDER SIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED, JERRY SPARKS, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTGRUMENT AND ACKNOWLEDGED THAT HE EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL.

Pat Gottshall

PAT GOTTSHALL
NOTARY REPUBLIC
FOR COUNTY AND STATE

EXHIBITS

1-OPINION FROM THE KY COURT OF APPEALS. 2 TO 1 VOTE.
2-PETITION FOR REHEARING DENIED
3-DISCRETIONARY REVIEW DENIED BY THE KY SUPREME COURT.
4-LABOR-MANAGEMENT AGREEMENT THAT SAYS "EMPLOYEE MUST BE REPRIMANDED IN THE MUTUAL MANAGERS OFFICE." YOUR PETITIONER WAS NEVER REPRIMANDED AND FILBURN AND BUSH, THE MUTUAL MANAGER AND ASSISTANT MUTUAL MANAGER , REFUSED TO TAKE ANY ACTION AT THE TIME OF THER ALLEGED INCIDENT. THEY WERE THE ONLY PROPER PARTIES THAT COULD TAKENANY ACTION. AT THE TIME OF THE AL-

LEGED INCIDENT, SWEAZY WAS ONLY A LINE SUPERVI OR, AND HAD NO AUTHORITY TO TAKE ANY ACTION. WEAY CLAIMS HE TOLD FILBURN AND BUSH THAT HE HOUGHT THE PETITIONER DIDN'T GIVE A SET UP PERSON NY CHANGE, BUT FILBURN AND BUSH REFUSED TO TAKE NY ACTION AGAINST THE PETITIONER. THAT SHOULD AVE BEEN THE END OF THE CASE.

TRANSCRIPT OF THE ARBITRATION HEARING. 2 LARGE OLUMES THAT THE KENTUCKY SUPREME COURT IS SUP- OSE TO SEND TO YOU. I HAVE CERTIFIED THE RECORD. LL OF MY CITATIONS THAT I SAY SEE THE ARBITRATION RANSCRIPT ARE IN THESE TWO VOLUMES.

THE 10 DAY RULE. YOUR PETITIONER WAS FIRED 2 ONTHS AFTER THE ALLEGED INCIDENT BY DAVID WEAZY. THE PETITIONER WAS REHIRED TWICE AFTER HE ALLEGED INCIDENT. WHY WOULD THEY REHIRE ACK A THIEF? PETITIONER WAS NEVER DISCIPLINED AS EQUIRED BY THE LABOR-MANAGEMENT AGREEMENT, ND FILBURN AND BUSH , THE MUTUAL MANAGER AND SSISTANT MUTUAL MANAGER REFUSED TO TAKE ANY CTION AGAINST YOUR PETITIONER AT THE TIME FOR THE LLEGED INCIDENT. THEY SAID THEY SAW NO REASON TO AKE ANY ACTION. THAT STATEMENT IS IN THE ARBITRA- ION TRANSCRIPT.

- CONTRACT PROVISION REGARDING SHORTAGES. 1ST, ND, 3RD, OFFENSE, YOU ARE SUPPOSE TO RECEIVE A WARNING. YOUR PETITIONER WAS FIRED 2 MONTHS AFTER THE RACING MEET BY A MAN WHO HAD ALTERIOR MO- TIVES FOR WHAT HE DID.

OPINION OF THE KY COURT OF APPEALS

JERRY SPARKS CASE # 89CA

1326

V

CHURCHILL DOWNS, DAVID SWEAZY
JERRY LAWRENCE

KY COURT OF APPEALS CASE # 89-CA 1326

EXHIBIT #1

AFFIRMING 2 TO 1 VOTE

UNPUBLISHED OPINION

THE APPELLANT APPEALS A GRANT OF A SUMMARY JUDGMENT BY THE JEFFERSON CIRCUIT COURT IN FAVOR OF THE APPELLEES IN AN ACTION TO HAVE A LABOR ARBITRATION AWARD SET ASIDE AND FOR DAMAGES.THE APPELLANT, JERRY SPARKS, WAS EMPLOYED AS A PARI MUTUAL CLERK AT THE APPELLEE CHURCHILL DOWNS. SPARKS WAS DISCHARGED BY CHURCHILL DOWNS ON FEBRUARY 1, 1988. THE LETTER DISCHARGING SPARKS WAS WRITTEN BY THE APPELLEE, DAVID SWEAZY, THE TRACK'S NEW ASSISTANT DIRECTOR OF MUTUALS. THE ALLEGED INCIDENT HAPPENED MORE THAN 2 MONTHS AGO AND

FILBURN AND BUSH THE MUTUAL MANAGER AND ASSISTANT MUTUAL MANAGER REFUSED TO TAKE ANY ACTION. SWEAZY SAID, "IN HIS LETTER THAT SPARKS FAILED TO SERVE THE CUSTOMERS IN A FORTHRIGHT MANNER. I'M NOT SURE WHAT THAT REALLY MEANS! SPARKS WAS ACCUSED OF SHORT CHANGING A SET UP PERSON. SPARKS SUBSEQUENTLY FILED A GRIEVANCE UNDER THE COLECTIVE BARGAINING AGREEMENT BETWEEN CHURCHILL DOWNS AND LOCAL 541 OF THE PARI MUTUEL CLERK'S UNION OF KENTUCKY ALLEGING THAT THE DISMISSAL WAS WITHOUT JUST CAUSE AND DENYING ANY WRONGDOING._ THE AGREEMENT PROVIDED FOR AN ARBITRATION PROCEEDING , AND A HEARING BEFORE AN ARBITRATOR WAS HELD. ON SEPTEMBER 21, 1988, THE ARBITRATOR UPHELD THE DISCHARGE. SPARKS WORKED ON ONLY THE VERY BUSIEST OF DAYS AS HE DID NOT HAVE MUCH SENIORITY. IT WAS SWEAZY DUTY AS A AREA SUPERVISOR TO CALL THE TOTE ROOM AND SHUT SPARKS'S MACHINE DOWN IF HE THOUGT SOMETHING WASN'T RIGHT. SWEAZY NEVER SHUT SPARKS MACHINE DOWN AND TENDS TO MAKE THIS COURT BELIEVE THAT NOTHING WAS WRONG. SWEAZY DID NOT TRAIN SPARKS; HE WAS TRAINED AT KEENELAND. AT THE TIME OF THE ALLEGED INCIDENT FILBURN THE MUTUAL MANAGER AND BUSH THE ASSISTANT MUTUAL MANAGER REFUSED TO TAKE ANY ACTION AGAINST SPARKS. THAT SHOULD HAVE BEEN THE END OF THIS CASE. CLERK'S ARE ALLOWED TO BE AND IN FACT ARE ENCOURAGED TO BET AT CHURCHILL DOWNS. THE SET UP PERSON A FEMALE PAM

BELLUCCI, WHO NEVER DID THIS BEFORE SAW SPARKS PUT SOME CHANGE IN HIS POCKET. BELLUCCI ADMITTED SHE DID NOT KNOW HOW MUCH CHANGE. SPARKS COULD HAVE BEEN CASHING HIS OWN TICKET. BELLUCCI TESTIFIED THAT SHE WAS NOT SHORTCHANGED BY SPARKS ON WINNING TICKETS SHE CASHED LATER THAT DAY. SPARKS TESTIFIED AT THE HEARING THAT HE HAD NEVER INTENTIONALLY SHORTCHANGED A CUSTOMER. SPARKS STATED HE HAD MISTAKENLY PUT ONE PATRON'S TICKET IN HIS CANCELLED TICKETS, BUT EXPLAINED THAT HE WAS VERY BUSY THAT DAY. THE AMAZING THING ABOUT THIS CASE IS THAT CHURCHILL DOWNS CONTINUED TO REHIRE SPARKS AFTER THE NOV. 15 INCIDENT! IF THEY (CHURCHILL DOWNS) REALLY THOUGHT HE STOLE CHANGE 20 CENTS AND 60 CENTS WHY WOULD THEY CONTINUE TO REHIRE HIM? SPARKS WAS REHIRED ON NOVEMBER 28, AND 29, 1987 AFTER THE ALLEGED INCIDENT ON NOVEMBER 15, 1987. SOMETHING DOES NOT MAKE SENSE, IF HE REALLY STOLE CHANCE WHY WOULD CHURCHILL DOWNS CONTINUE TO REHIRE HIM? THE PROER PARTIES FILBURN AND BUSH REFUSED TO TAKE ANY ACTION. 2 MONTHS LATER WHEN DAVID SWEAZY GETS HIS NEW JOB AFTER FILBURN RETIRES, AND BUSH TAKES HIS PLACE, SWEAZY BECOMES THE_NEW ASSISTANT MUTUAL MANAGER. FIRST THING SWEAZY DOES IS GOES AFTER SPARKS'S JOB! SPARKS LAID THE BLAME FOR HIS PROBLEMS ON SWEAZY WHO SPARKS CLAIMED WAS OUT FOR REVENGE AGAINST HIM FOR ALLEGEDLY HAVING AN AFFAIR WITH

HIS WIFE. SPARKS ALSO CLAIMED SOME CUSTOMERS LEFT HIM TIPS. THIS IS VERIFIED IN THE ARBITRATION TRSWEAZY ANSCRIPT BY BOTH BUSH AND SWEAZY . CLERKS CAN ALSO MAKE A MISTAKE OR CUSTOMERS CAN LIE ABOUT NOT RECEIVING THE PROPER AMOUT OF CHANGE. SWEAZY IS THE SAME MAN WHO BARRED SPARKS AS A CUSTOMER AT ANOTHER TRACK, LOUISVILLE DOWNS WHEN HE REFUSED TO PAY FOR TICKETS THAT WERE PUNCHED OUT INCORRECTLY. SWEAZY IS ALSO THE SAME MAN WHO BARRED SPARKS FROM LOUISVILLE DOWNS IN DECEMBER 1987 AFTER HE WAS ALLOWED TO RETURN TO THE TRACK, AND SHORTLY AFTER THE CHURCHILL DOWNS ALLEGED INCIDENT. IT IS OBVIOUS THAT SWEAZY DIDN'T LIKE SPARKS. SPARKS MAINTAINS HE WAS DISCIPLINED MORE SERIOUSLY THEN OTHER MUTUAL CLERKS WHO COMMITTED MORE SERIOUS OFFENSIVES, INCLUDING THE TAKING OF MONEY. REED BROWN ANOTHER MUTUAL CLERK EITHER LOST OR STOLE $3700. DURING THE SAME RACING MEET AND HE WAS NOT FIRED; SWEAZY ADMITS KEEPING REED BROWN ON THE JOB BECAUSE HE PLAYS GOLF AND DRINKS BEER WITH REED BROWN. THAT ADMISSION IS IN THE ARBITRATION TRANSCRIPT WHICH IS PART OF THIS RECORD. MIKE FOSTER ANOTHER MUTUAL CLERK CAME TO WORK DRUNK AND HE WAS NOT FIRED. HE WAS ONLY SUSPENDED FOR ONE DAY! THAT ADMISSION IS IN THE ARBITRATION TRANSCRIPT. AS TO THE ARBITRATOR DAVID BECKMAN. HE DID IN FACT LEAVE OFF TWO WITNESSES WHO TESTIFIED FOR THE PETI-

EXHIBIT # 1A

FEBRUARY 1, 1988

MR. JERRY SPARKS
113 WEST SOUTHERN HEIGHTS
LOUISVILLE, KY 40214

DEAR MR. SPARKS,

EFFECTIVE THE ABOVE DATE,YOU ARE HEREBY DISCHARGED FROM THE EMPLOYMENT OF CHURCHILL DOWNS.

THE REASON FOR YOUR DISCHARGE IS FAILURE TO SERVE OUR PATRONS IN A FORTHRIGHT MANNER.

OUR PATRONS ARE THE LIFE BLOOD OF OUR INDUSTRY. THEY SHOULD BE TREATED WITH TOTAL HONESTY AT ALL TIMES.

FOR THE GOOD OF OUR INDUSTRY, OUR PATRONS AND EMPLOYEES, WE DEEM THIS ACTION NECESSARY.

DAVIDE SWEAZY
ASST. DIRECTOR OF
MUTUELS CHURCHILL DOWNS, INC

CC; GERALD LAWRENCE, VICE PRESIDENT 7 GENERAL MANAGER RICHARD SMITH, PRESIDENT, LOCAL 541 , FILES

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
CASE #89 CA 1326 MR

EXHIBIT #2

JERRY SPARKS — APPELLANT
V
CHURCHILL DOWNS
DAVID SWEAZY — APPELLEES
GERALD LAWRENCE

2-1 VOTE

ORDER DENYING PETITION FOR REHEARING

THE COURT HAVING CONSIDERED THE PETITION FOR REHEARING AND BEING SUFFICIENTLY ADVISED, IT IS ORDERED THAT THE SAME IS HEREBY DENIED.

ENTERED NOV 30, 1990 — CHARLES REYNOLDS

EXHIBIT # 3

KENTUCKY SUPREME COURT

CASE # 90-018

JERRY SPARKS
V
CHURCHILL DOWNS

DAVID SWEAZY

JERRY LAWRENCE

appellant's motion for DISCRETIONARY REVIEW IS HEREBY DENIED.

4-3-91

4-3 VOTE:

JUDGE STEPHENS

EXHIBIT #4

DISCIPLINE

NO EMPLOYEE MAY BE REPRIMANDED BY ANYONE EXCEPT THE MUTUAL MANAGER, THE ASSISTANT MUTUAL MANAGER, THE PRESIDENT OF THE COMPANY, THE GENERAL MANAGER, OR THE EMPLOYEE 'S DEPARTMENT HEAD. WHEN THE MUTUAL MANAGER OR OTHER SUCH OFFICER CONTEMPLATES DISCIPLINARY ACTION, HE MUST REPRIMAND THE EMKPLOYEE IN THE MUTUAL MANAGER'S OFFICE . IN SUCH CASE, AN OFFICER OF THE UNION MUST BE PRESENT WITH THE EMPLOYEE THROUGHOUT SUCH DISCUSSION AND REPRIMAND AND NO OTHERS SHALL BE PRESENT , OTHER THAN ONE ADDITIONAL REPRESENTATIVE OF THE COMPANY

EXHIBIT # 6

10 DAY RULE

ARTICLE XIII AT 9

IF THE KNOWLEDGE OF THE GRIEVANCE OCCURRED MORE THAN TEN 10 WORKING DAYS PRIOR TO THE DATE THE COMPANY WAS NOTIFIED , THE GRIEVANCE SHALL BE DISMISSED AND THE MATTER SHALL BE AUTOMATICALLY CLOSED, OR IN ANY EVENT NO LATER THAN TEN (10) DAYS AFTER THE CLOSE OF THE MEET OF WHICH THE GRIEVANCE AROSE , THE MATTER SHALL BE CLOSED.

EXHIBIT # 7

SHORTAGES

ARTICLE XI

1-EACH EMPLOYEE SHALL BE FINANCIALLY RESPONSIBLE FOR HIS PROVEN SHORTAGES AND THE LIABILITY THEREFOR SHALL BE DETERMINED BY THE COMPANY . ALL SHORTAGES IN EXCESS OF $100 WILL BE COLLECTED IN FULL ON A DAILY BASIS. SHORTAGES WILL BE COLLECTED UP TO DATE EACYH PAYDAY. CARELESS USE OF COMPANY FUNDS WILL NOT BE TOLERATED. ADJUSTED SHORTAGES IN EXCESS OF $100 WILL BE TOLERATED ONLY 3 TIMES. THEREAFTER, SUSPENSION AND OR DISMISSAL WILL FOLLOW. BELOW FORMULA BASED UPON CONTRACT YEAR;

1ST, 2 ND, 3 RD OFFENSE-WARNINGS
4 TH OFFENSE-TWO DAY SUSPENSION
5 TH OFFENSE-FOUR DAY SUSPENSION
6TH OFFENSE- SIX DAY SUSPENSION
7 TH OFFENSE-SUSPENDED BALANCE OF RACING MEET

A SHORTAGE IS ANY DEFICIENCY IN YOUR CASH ACCOUNT CAUSED BY INTENTION, INADVERTENCE, OR NEGLIGENCE.

YOUR PETITIONER NEVER RECEIVED ANY WARNING AS REQUIRED BY THE LABOR -MANAGEMENT AGREEMENT. WE ARE NOT TALKING ABOUT A SHORTAGE IN EXCESS OF $100.00 , WE ARE ONLY TALKING ABOUT 20 CENTS AND 60 CENTS IN CHANGE. IF A MAN WHO HANDLED THOUSANDS OF DOLLARS THRU HIS MUTUAL WINDOW WAS GOING TO STEAL HE CERTAINLY WOULD STEAL A SIGNIFICANT AMOUNT OF MONEY! NO MAN IN HIS RIGHT MIND WOULD STEAL CHANGE WHEN HE HANDLES THOUSANDS OF DOLLARS EVERY DAY THRU HIS WINDOW. IT WAS A SET UP PERSON WHO SAID SHE DIDN'T GET HER CHANGE.

I CERTIFY THAT ALL THE EXHIBITS-APPENDIX ATTACHED TO THE PETITION FOR CERTIORARI FILED HEREIN ARE COPIES OF WHAT THEY PURPORT TO BE.

Jerry Sparks

JERRY SPARKS